HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1472/02 (S/B)

Km. Champa Devi

vs

State and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 21.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1472 (SB) OF 2002

Km. Champa Devi,
D/o Mr. Gajendra Singh,
R/o Village Kafalkhet,
P.O. Bageshwar,
District-Bageshwar. .....Petitioner.

Versus

1. State of Uttaranchal.
   Through Secretary Social Welfare, Civil Secretariat,
   Dehradun.
2. Director of Social Welfare, State of Uttaranchal.
3. District Social Welfare Officer, Bageshwar, District-Bageshwar.
4. District Magistrate, Bageshwar.
5. Dilip Prasad (Clerk),
   S/o Mr. Kushi Ram,
   R/o District Samaj Kalyan Adhikari Office, Bageshwar.

.....Respondents.

Dated: 21.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 4.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 5th October, 2002 passed by the respondent no. 3.

3. Briefly stated, the petitioner has been working as Clerk and for purposes of regularization, he filed a representation on 14.05.2002. The District Magistrate has recommended the name of the petitioner for regularization. When no action was taken, the petitioner has filed present writ petition.

4. The grievance of the petitioner is that the order has been passed dispensing the service of the petitioner from the post of daily wager clerk, hence, he has filed present writ petition.

5. At the time of the filling of the writ petition, the petitioner was permitted to continue. A perusal of the record shows that the petitioner is a daily wager and therefore, he has no right to claim regularization in view of the judgment of ***secretary State of Karnataka Vs. Uma Devi 2006(4) SCC Page 1,*** where it has been held as under:-

> *"12. In spite of this scheme, there may be occasions, when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the need of the situation. But*

the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons ion various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinary not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have engaged without following a due process of selection as envisaged by the constitutional scheme.

14. During the course of the arguments, various orders of the courts either interim or final were brought to our notice. The purport of those orders more or les was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to the legal principles and it is time that this Court settled the law once and for all so that in case the Court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned counsel for the respondents based on the various orders passed by the high Court or by the Government pursuant to the directions of the Court also highlights the need for settling the law by this Court. The bypassing of the

constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in Dharwad case all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down."

15. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In

State of Mysore v. S.V. Narayanappa (1967) 1 SCR 128 this Court stated that it was a misconception to consider that regularization meant permanence. In R.N. Nanjundappa v. T. Thimmiah (1972) 1 SCC 409 this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

"Counsel on behalf of the respondent contended that regularization wuld mean conferring the quality of permanence on thue appointment whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularisation of the rules under Article 309. Botht he contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-complaince with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in definance of rules or it may have the effect of setting at naught the rules."

16. In B.N. Nagarajan v. State of Karnataka (1979) 4 SCC 507 this Court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and

are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasized that when rules framed under Article 309 of the Constitution are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principal, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a nonfundamental element of that process or procedure ahs not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules mad ein that behalf, can be treated as permanent or can be directed to be treated as permanent."

6. In case, the petitioner is continuing as a daily wager, on filing the representation on behalf of the petitioner the respondents are directed to consider the case in accordance with the recommendation of the District Magistrate. However, no direction for regularization can be passed under Article 226/227 of the Constitution of India in view of the judgment of the Apex Court in ***Secretary State of Karnataka Vs. Uma Devi*** (supra).

7. Subject to the aforesaid observations, writ petition lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

21.08.2006
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